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# Searching for the Pieces of the EU Justice Puzzle: Articles 47, 48, 49 and 50 of the EU Charter of Fundamental Rights

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Located in the 'Justice' Title of the EU Charter of Fundamental Rights, Article 47 of the Charter provides the fundamental right to an effective remedy and a fair trial and codifies the EU general principle of effective judicial protection. This Article is multi-faceted and serves different purposes, ranging from ensuring effective remedies in the fields covered by EU law to the protection of the rule of law. Article 47 is the constitutional factotum of the EU legal order. A less-explored aspect of the role of Article 47 in the EU concerns its interplay with the other provisions of the Charter's Justice Title. The Justice Title of the Charter protects fundamental individual entitlements that are considered crucial for the administration of justice in the EU legal landscape. Hence, Article 47 and its sibling provisions in the Justice Title of the Charter constitute the essential building blocks to ensure justice in the EU. The purpose of this chapter is twofold: first, it explores the synergies between Article 47 and the other provisions of the Justice Title of the Charter; secondly, it enquires into the aspects of the EU conception of justice that emerge from the interpretation and application of the Justice Title. The chapter shows that the idea of 'justice' in the EU is a complex, evolving puzzle made of a series of fundamental legal entitlements, and most of its pieces are still to be found through the interpretative activity of the Court of Justice.

## I. Introduction

Since the acquisition of legally binding effects by the EU Charter of Fundamental Rights (the Charter), Article 47 thereof has become the most cited Charter provision

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in EU case law.[1] The omnipresence of this norm in EU case law is not accidental: jointly with its parent principle, the principle of effective judicial protection, Article 47 paves the way for the effective enforcement of every other EU right.[2] The centrality of the principle of effective judicial protection – and, by reflection, of Article 47 – in the EU constitutional architecture has also emerged in connection with the protection of the rule of law[3] since the seminal *Les Verts* judgment,[4] delivered in 1986. More recently, in so far as it protects the principle of judicial independence,[5] Article 47 was employed as one of the standards against which the reforms of the Polish Supreme Court and Disciplinary Chamber were scrutinised.[6] Article 47 has thus become the jewel in the crown of the Charter, being the right of all other EU rights.[7]

And yet Article 47 does not exist as a stand-alone provision, but is one of the norms of the Justice Title of the Charter. This section of the Charter provides a series of guarantees that concern the relationship between public authorities and individuals in the management of justice: while Article 48 protects the presumption of innocence and right of defence and Article 49 grants the principle of legality and proportionality of criminal offences and penalties, Article 50 enshrines the *ne bis in idem* principle. All these articles contribute to shaping the fundamental rights entitlements within the scope of application of the Charter when individuals are confronted with law enforcement. Seen from another perspective, these norms enshrine the EU understanding of the essential elements of fairness in the administration of justice.

Remarkably, the Justice Title of the Charter has remained in the shadow of Article 47 Charter and has not received much attention in the literature. Its role and effects in the EU constitutional landscape lie underexplored so far. The following questions thus

[1] E Frantizou, 'Binding Charter Ten Years on: More than a "Mere Entreaty"?' (2019) 38 *Yearbook of European Law* 73; K Gutman, 'Article 47: The Right to an Effective Remedy and to a Fair Trial' in M Bobek and JM Adams-Prassl (eds), *The EU Charter of Fundamental Rights in the Member States* (Hart Publishing, 2020).

[2] See G Gentile, 'Article 47 Charter in the case law of the Court of Justice of the EU: between EU constitutional essentialism and the enhancement of justice in the Member States' in C Mak and B Kas (eds), *Civil Courts and the European Polity: The constitutional role of private law adjudication in Europe* (Hart Publishing, forthcoming).

[3] See A Arnull, 'Article 47 CFR and National Procedural Autonomy' (2020) 5 *European Law Review* 681; Gutman (n 1).

[4] Case C-294/83 *Les Verts v Parliament* EU:C:1986:166.

[5] M Bonelli and M Claes, 'Judicial Serendipity: How Portuguese Judges Came to the Rescue of the Polish Judiciary' (2018) 14 *European Constitutional Law Review* 622.

[6] Commission, 'Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, 2020 Rule of Law Report: The Rule of Law Situation in the European Union' COM (2020) 580 final.

[7] The impact of this provision in the EU legal order has been widely discussed. It has been observed that the principle of effective judicial protection enshrined in Art 47 works as a meta-principle that governs the different pillars of the EU judiciary. Namely, Roeben argues that Art 47 has acquired an 'obligation' aspect which goes beyond the protection of individual rights stemming from EU law~~;~~ See on the 'obligation aspect' of Art 47 Case C-619/18 *Commission v Poland* EU:C:2019:531; Joined Cases C-585/18, C-624/18 and C-625/18 *AK and Others ~~v Sąd Najwyższy~~* EU:C:2019:982; Case C-64/16 *Associação Sindical dos Juízes Portugueses ~~v Tribunal de Contas~~* EU:C:2018:117; Case C-556/17 *~~Alekszij~~ Torubarov ~~v Bevándorlási és Menekültügyi Hivatal~~* EU:C:2019:626; Case C-585/16 *Serin Alheto ~~v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite~~* EU:C:2018:584; See ~~also~~ V Roeben, 'Judicial Protection as the Meta-Norm in the EU Judicial Architecture' (2020) 12 *Hague Journal on the Rule of Law* 29.

arise: what is the interplay between Article 47 and the other provisions of the Justice Title of the Charter? What are the aspects of the EU conception of justice that emerge from the interpretation and application of Articles 47, 48, 49 and 50 Charter?

The chapter addresses these questions and proceeds in three acts. The first act consists of a systematic interpretation of Article 47 and the other provisions contained in the Justice Title. This analysis seeks to shed light on the wording of these norms to assess their content and scope. The second act moves on to the EU case law interpreting these norms, with a view to gathering details on the usage of these provisions by the Court of Justice of the EU (CJEU). In this context, the analysis concentrates on two aspects: first, the synergies between Article 47 and the other norms of the Justice Title of the Charter in EU case law; secondly, the interplay of the Charter with the ECHR, EU procedural laws and national procedural autonomy. Without intending to provide an exhaustive discussion, the third act of the chapter reflects on the aspects of the EU understanding of justice emerging from the homonymous Title of the Charter. In so doing, this final part of the chapter builds on previous literature arguing that EU fundamental rights – including the provisions in the Justice Title of the Charter – reveal elements of the EU notion of justice. What then are the pieces of the EU justice puzzle that can be discovered in the Justice Title of the Charter?

## II. The Justice Title of the Charter: A Systematic Reading

During the drafting process of the Charter, a list of rights was prepared, taking inspiration from the Treaties, international human rights conventions, in particular the ECHR, and the texts of national constitutions. Already in the first version of the Charter dated 2000, the drafters listed what currently are Articles 47, 48, 49 and 50 under the same Title.[8] Originally, the rights to an effective remedy and the right to a fair trial were included as two different provisions under the subtitle 'access to justice and procedural rights.' In addition, the 'judicial rights' also encompass the right of appeal in criminal matters, the principle of legality (*nullum crimen sine lege*, no punishment without law), the principle of *ne bis in idem* (the right not to be tried or punished twice) and compensation for wrongful conviction. Later in the drafting process, the Title collecting these provisions was entitled 'Justice'. Some adjustments were made: the right to an effective remedy and the right to a fair trial were merged in the same provision; furthermore, the presumption of innocence and right of defence as well as the principle of proportionality of criminal offences and penalties were added.

In the current and final version of the Charter, Article 47 protects both the right to an effective remedy and to a fair trial. When interpreting Article 6(1) ECHR, in the light of which Article 47 Charter should be read,[9] the ECtHR stated that '[…] to construe Article [6(1) ECHR] as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the

[8] M Steiert and N Coghlan, *The Charter of Fundamental Rights of the European Union: The Travaux Préparatoires and Selected Document* (European University Institute, 2020).

[9] Art 52(3) EUCFR.

principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention'.[10] As a consequence, Article 6 ECHR was deemed to protect multiple sub-rights, such as the principle of equality of arms, to name one.[11] Accordingly, Article 47 also protects a series of sub-rights, such as the right to hear witnesses and to remain silent. Article 47 Charter does not specifically apply only to civil or criminal proceedings,[12] but to any kind of proceedings.[13] Under the heritage of the principle of effective judicial protection, this provision has been used as the vehicle for other rights to become effective in the EU constitutional space. Hence, Article 47 has also strong ties with the rule of law.[14]

Article 48 appears to add further guarantees to the rights of Article 47, but the overlaps between the two norms are evident. Articles 47 and 48 are referred to in numerous EU secondary measures aimed at protecting individual procedural rights.[15] To begin with, Article 48 states that 'Everyone who has been charged shall be presumed innocent until proved guilty according to law.' The presumption of innocence laid down in Article 48 applies mainly in the field of criminal law. However, both Articles 47 and 48 protect the right to be defended. Article 47 states that 'Everyone shall have the possibility of being […] defended […]', while Article 48 affirms that 'Respect for the rights of the defence of anyone who has been charged shall be guaranteed'. We could thus argue that the scope of application of the right of the defence under Article 48 is distinct from that in Article 47, since the former applies especially to criminal proceedings. Yet, as mentioned, the wording of Article 47 Charter does not exclude its application to criminal trials. Therefore, both provisions may be in principle used to guarantee defence rights in criminal proceedings. If the defence rights stemming from these Articles were the same, then the question arises as to the autonomous value of Article 48 compared to Article 47. A way to distinguish the content of Article 48 defence rights from those provided under Article 47 would be to interpret the former as providing *specific* entitlements in criminal proceedings that add to the *general* ones provided by Article 47 Charter.

Moving on to Article 47 and Article 49, their relationship is complementary. While Article 47 ensures that there might be a redress through fair judicial proceedings for the violation of rights and freedoms, Article 49 lays down three principles: that of legality, that of *favor rei* and that of proportionality of the penalties. First, under the principle of legality, criminal sentences should be issued only with regards to behaviours that were considered as punishable at the time when they were committed. Secondly, Article 49

[10] Judgment of the European Court of Human Rights of 19 March 1997 in Case No 18357/91 *Hornsby v Greece*, para 40.

[11] For an analysis on the case law on Art 6 ECHR and the principle of equality of arms, see O Sidhu, *The Concept of Equality of Arms in Criminal Proceedings under Article 6 of the European Convention on Human Rights* (Intersentia 2017).

[12] Art 6 ECHR.

[13] As stated in the explanations of the Charter, Art 47 EUCFR introduces 'in Union law [a] protection [which] is more extensive since it guarantees the right to an effective remedy before a court'.

[14] See Explanations relating to the Charter of Fundamental Rights [2007] OJ C303, 29.

[15] See, eg Dir 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1.

introduces the principle of *favor rei*, according to which, if a law lowers the penalty for a criminal offence, the lighter offence should be applied instead of the former heavier penalty. Thirdly, under the principle of proportionality of penalties, Article 49 offers guarantees for those that have been accused of criminal offences that the penalties 'must not be disproportionate' to the offence committed. In this regard, it imposes a burden on the addressees of penalties to prove the disproportionate nature of sanctions.[16] The negative sentence (ie, 'must not be disproportionate') in Article 49(3) leaves open questions on the role of the courts: should judges find that a penalty is disproportionate only when parties submit evidence to that effect, or can they be active in gathering proof to that effect? What remains certain is that, for a penalty to comply with Article 49, there should be no evidence suggesting that the said penalty is disproportionate. Overall, Article 49 requires foreseeability and fairness in the punishment of individuals, and is thus linked with values of the rule of law and retributive justice.

Finally, Article 50 Charter codifies the *ne bis in idem* principle. This provision applies to different areas of substantive EU law and is referred to ~~significantly~~ in secondary EU legislation.[17] One of the prerequisites to apply Article 50 Charter is that the final measures are of a criminal nature.[18] While Article 47 guarantees an effective remedy and a fair trial for a violation of rights and freedoms, Article 50 Charter expands the protection by granting specific entitlements in the context of criminal proceedings. It ensures that no one should be tried or punished again (*ne bis*) for the same offence (*idem*) for which they have already been finally acquitted or convicted (*res judicata*). The rationale of this provision is twofold. First, Article 50 balances the principles of procedural efficiency and fairness:[19] public authorities should not punish the same crimes twice, at the risk of making the justice system inefficient and too repressive. Secondly, Article 50 Charter lays down the foundations of judicial cooperation among EU Member States in the field of criminal law. As provided in the Explanations of the Charter, the *ne bis in idem* rule applies not only within the jurisdiction of one Member State, but also between the jurisdictions of several Member States.[20] Therefore, this provision has a transnational dimension, since it ensures that an individual may not be tried twice for the same conduct in different EU Member States.[21] The transnational character of this article grants it a central role in the edifice of the Area of Freedom, Security and Justice (AFSJ).

At this point, we can already draw some elements of the conception of 'justice' under the homonymous Title of the Charter. ~~In particular,~~ Article 47 is the principal gate to access judicial protection of rights when an individual faces a violation of their rights and freedoms, regardless of the civil, administrative or criminal nature of the proceedings. The rights to an effective remedy and a fair trial are instrumental to obtaining justice and, thus, to seeking redress for a violation of any other right. Then, Article 48 regulates how authorities can issue convictions only when an individual is

[16] Case C-90/15 *Hansen & Rosenthal and H&R Wax Company Vertrieb v Commission* EU:C:2017:123.

[17] In the Area of Freedom, Security and Justice, see Art 54 of the Convention of 19 June 1990 implementing the Schengen Agreement [2000] OJ L239/19.

[18] Case C-617/10 *Åkerberg Fransson* EU:C:2013:105, para 33.

[19] Case C-579/15 ~~*Daniel Adam*~~ *Popławski* EU:C:2017:503, para 46.

[20] Art 50 EUCFR.

[21] *Cf* with Art 4 Protocol No 7 ECHR.

found to be guilty. This article, which also overlaps with the third sentence of Article 47 as far as it concerns the right of the defence, provides specific guarantees in the context of criminal trials. Article 49 is specular to Article 47: while the latter requires the existence of an effective remedy for the violation of rights and grants the right to a fair trial, the former constrains the discretion of public authorities in imposing repressive measures, such as penalties and convictions, and lays down essential guarantees of fairness towards the addressees of those measures. In so doing, Article 49 further complements how authorities should enforce the law and establishes several principles, such as those of the foreseeability of criminal law (principle of legality), *favor rei* and the proportionality of penalties. Finally, Article 50 concludes the Justice Title of the Charter by explaining that no one can ever undergo punishment twice for the same offence in the territory of the EU. Article 50 is intrinsically linked to the idea of fairness of judicial proceedings enshrined in Article 47. In conclusion, decisions of the public authorities that do not comply with the Articles of the Justice Title cannot be considered as lawful and, ultimately, fair.

A main preliminary finding can thus be presented: Articles 48, 49 and 50 all overlap, to varying extents, with Article 47, which is the *primus inter pares* among the EU fundamental rights related to the administration of justice. Yet, while Article 47 is a catch-all provision, Articles 48, 49 and 50 rather refer to rights to be granted in particular in the field of criminal law. This suggests that the guarantees existing in the Member States in the field of criminal law have also been replicated at the EU level. The expansion of EU fundamental guarantees in the field of criminal law through the Charter is a testament to the evolution of the EU legal order, which now places the individual and ~~their~~ fundamental rights centre stage. Ultimately, the impression is that the EU legal order is becoming more similar to a national one, since it deals with questions of fundamental rights entitlements in a similar way to the constitutional systems of the EU Member States.

The following sections will analyse the interplay between the Justice provisions of the Charter in the EU case law. In so doing, it will highlight what Articles 48, 49 and 50 add to Article 47 in shaping the individual guarantees ensuring that justice is provided in the field of application of the Charter.[22]

## III. Interdependent but Autonomous: Articles 47 and 48 of the EU Charter

As already observed, the rights provided under Article 48 and following fall within the scope of the macro-right to an effective remedy and a fair trial. Indeed, Article 47 and Article 48 have the same parent: Article 6 ECHR. While Article 47 Charter corresponds

[22] Note of criteria selected for the case law on Articles 48 – 49 – 50 Charter: Documents = Documents published in the ECR: Judgments – Orders – Opinions of the Court; Court = "Court of Justice"; Case status = "Cases closed"; Period or date = "Date of delivery"; period= "from 01/01/2010 to 28/02/2021". Preliminary results about the jurisprudence on the relationship between Article 47 and the other Justice provisions: (i) out of 50 cases concerning Article 48, 42 cases present a combination of Article 48 and Article 47; (ii) out of the 26 cases regarding Article 49, 20 cases present a combination of Article 49 with Article 47; (iii) out of 25 cases concerning Article 50, 19 only 3 cases present a combination of Article 50 and Article 47.

to Article 6(1) ECHR, Article 48 Charter reflects Article 6(2) and (3) ECHR. Sharing the same origin, the relationship between Article 47 and 48 is close and highly influenced by the ECtHR case law on Article 6 ECHR.[23] Another element that impacts on the interactions between these provisions is the existence of EU secondary procedural law.[24] In the light of the hierarchy of norms in the EU, these measures should comply with the Charter. However, EU legislation may also be used to limit the breadth of the Charter rights in light of the consensus reached at the European level, subject to the condition listed in Article 52 Charter.[25] The case law offers multiple examples of instances of joint application of Articles 47 and 48 Charter. While in numerous judgments Article 47 and 48 have been jointly used to protect the same entitlements, in other judgments the CJEU has instead provided Article 48 with autonomy from Article 47.

To begin with, *Spetsializirana prokuratura*[26] indicates that the right of suspects and accused persons to be present at the trial is based on the right to a fair trial enshrined in Article 6 ECHR, which corresponds to Article 47(2) and (3) and Article 48. This suggests that Article 48, insofar as it protects the right of the defence, is merely a manifestation of Article 47(2) and (3). This interpretation is further confirmed in the case *Rayonna prokuratura Lom*.[27]

In other judgments, Article 47 and Article 48 are said to lay down the right to be heard, which forms an integral part of the rights of the defence.[28] This right constitutes a general principle of EU law that 'requires the authorities to pay due attention to the observations submitted by the person concerned […]; the obligation to state reasons […] is thus a corollary of the principle of respect for the rights of the defence'.[29] It follows that both Article 47 and 48 require Member States to ensure that the addressees of decisions that fall within the scope of EU law can ascertain the reasons upon which that decision is based, to enable them to defend their rights and to decide whether it is appropriate to refer the matter to the competent court.

However, the right to be heard as enshrined in these provisions may be subject to limitations under EU legislation. In *Radu*,[30] the issue concerned whether a joint reading of the Framework Decision 2002/584 on the European Arrest Warrant (EAW) and Articles 47 and 48 Charter indicates that the executing judicial authorities can refuse to enforce an EAW in cases where the addressee was not heard before the issuance of that EAW. After recalling that the Framework Decision provides the grounds for mandatory non-execution, the Court observed that the infringement of the right to be heard before the issuance of an EAW was not included among the grounds to obtain refusal of the execution. What is more, 'to hear the requested person before such a European arrest

[23] S Peers et al (eds), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing, 2014).

[24] For an analysis of the relationship between EU secondary law and EU primary law, see M Eliantonio, 'The Relationship between EU Secondary Rules and the Principles of Effectiveness and Effective Judicial Protection in Environmental Matters: Towards a New Dawn for the "Language of Rights"?' (2019) 12 *Review of European Administrative Law* 95.

[25] Case C-399/11 ~~*Stefano*~~ *Melloni* ~~*v Ministerio Fiscal*~~ EU:C:2013:107; See also Art 52 EUCFR.

[26] Case C-611/18 P *Pirelli & C.* ~~*SpA*~~ *v European Commission* EU:C:2020:868, para 36.

[27] Case C-467/18 *EP* EU:C:2019:765, para 36.

[28] Case T-643/11 *Crown Equipment (Suzhou) Co Ltd and Crown Gabelstapler GmbH & Co KG v Council of the European Union* EU:T:2014:1076, para. 38.

[29] Case C-230/18 *PI* ~~*v Landespolizeidirektion Tirol*~~ EU:C:2019:383.

[30] Case C-396/11 ~~*Ciprian Vasile*~~ *Radu* EU:C:2013:39.

warrant is issued would inevitably lead to the failure of the very system of surrender provided for by Framework Decision 2002/584'.[31] In any event, 'the right to be heard will be observed in the executing Member State in such a way as not to compromise the effectiveness of the European arrest warrant system.'[32] The Court thus concluded that 'the observance of Articles 47 and 48 of the Charter does not require that a judicial authority of a Member State should be able to refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard by the issuing judicial authorities before that arrest warrant was issued'.[33]

*Radu* suggests that the consensus reached in EU acts defines the content of EU fundamental rights, and not vice-versa: in the case at hand, the scope of the right to be heard was shaped by the duty of national authorities to execute a European Arrest Warrant. Seen from another perspective, *Radu* signals that the CJEU gives prevalence to the *lex specialis* (EU secondary legislation) over the *lex generalis* (EU fundamental rights). Yet, favouring the *lex specialis* might entail a curtailment of fundamental rights in order to pursue EU policy objectives. How to strike a balance between EU objectives and fundamental rights has haunted the EU since the *Internationale* judgement,[34] and a definitive methodology has clearly not been defined (yet).

Nonetheless, recent case law suggests an opposite approach by the CJEU on this matter. In *DB v Consob*,[35] the CJEU held that EU secondary legislation establishing the sanctions for a failure to cooperate with national authorities should be interpreted in the light of Articles 47 and 48 Charter. *DB v Consob* is also of relevance because Articles 47 and 48 Charter were interpreted, for the first time, as both enshrining the right to silence.[36]

Articles 47 and 48(2) were also jointly used to protect the fundamental right to obtain the hearing of a witness. In *Gambino and Hyka*,[37] the CJEU recalled that according to Article 6(3) ECHR individuals do not have an absolute right to call every witness. This norm is instead aimed at ensuring that a procedure, considered in its entirety, gives the accused person an adequate and proper opportunity to challenge the suspicions concerning them.[38] Furthermore, the principles of fair trial stemming from Articles 47 and 48 impose that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify.[39] In *Gambino*, the influence of Article 6 ECHR over the right to hear witnesses in criminal cases granted by Articles 47(2) and 48 becomes evident.

[31] ~~ib~~ibid, para 40.
[32] ibid, para 41.
[33] ibid, para 39.
[34] Case C-11/70 *Internationale Handelsgesellschaft ~~mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel~~* EU:C:1970:114.
[35] Case C-481/19 *DB ~~v Commissione Nazionale per le Società e la Borsa (Consob)~~* EU:C:2021:84.
[36] Ibid.
[37] Case C-38/18 *~~Massimo~~ Gambino and ~~Shpetim~~ Hyka ~~v Procura della Repubblica presso il Tribunale di Bari and Others~~* EU:C:2019:628, para 38.
[38] Case C-702/19 P *Silver Plastics GmbH & Co. KG and Johannes Reifenhäuser Holding GmbH & Co KG v European Commission* EU:C:2020:857.
[39] Judgment of the European Court of Human Rights of 26 March 1996 in Case No 20524/92 *Doorson v Netherlands*, para 70; Judgment of the European Court of Human Rights of 5 October 2006 in Case No 45106/04 *Marcello Viola v. Italy*, para 51.

When it comes to the right of the defence, the Court has cited as sources both Articles 47 and 48 Charter. In particular, *Boudjlida*[40] suggests that Articles 47 and 48 may be used interchangeably to protect the right of the defence and the right to a fair trial.[41] However, in other cases the analysis seems slightly more focused on Article 48.[42]

Overall, the case law under consideration illustrates that Article 47(2) and Article 48 correspond. In particular, the right of the defence is consistently interpreted as constituting a particular aspect of the right to a fair trial enshrined in Article 47.

Yet, in other judgments, Articles 47 and 48 kept their autonomy, in so far as Article 48 was considered the independent source of specific procedural rights. An example is *UBS Europe and Others*,[43] where these provisions were used to protect different rights, namely, the right to an effective remedy under Article 47, and the right of the defence under Article 48. Similarly, in *WebMindLicenses*[44] Article 48 was applied to interpret the rights of the defence, while Article 47 was used as the source of the right to judicial review of a tax decision. *Melloni* further demonstrates that Article 47 enshrines the right to a fair trial, while Article 48(2) provides the right of the defence. Accordingly, this case offers additional evidence that these provisions have a different scope and are not (at least entirely) interchangeable. *Melloni* is also interesting regarding the relationship between the Charter and EU secondary legislation. The CJEU recalled that the right to be heard, as protected under Article 6 ECHR, is not an absolute prerogative[45] and may also be waived. In particular, the conditions for the waiver of this right in the context of a European Arrest Warrant should be assessed in light of the Framework decision 2002/584. *Melloni* is yet another instance of the fluctuating approach of the CJEU concerning the relationship between the Charter and EU secondary legislation.

In *Ognyanov*,[46] Articles 47(2) and 48 were also interpreted independently, as respectively protecting the right to a fair trial and the presumption of innocence. In *AH and Others*,[47] Article 48, found to correspond to Article 6(2) and 6(3) ECHR, was deemed to guarantee the presumption of innocence[48] in the context of a criminal prosecution. Finally, Article 48 has also been autonomously interpreted to grant the right to access to documents[49] and the right to be represented by a lawyer, as part of the defence rights.[50]

[40] Case C-249/13 *Khaled Boudjlida v Préfet des Pyrénées-Atlantiques* EU:C:2014:2431.

[41] Art 41 EUCFR, which protects the right to be heard before the administration, is connected to Arts 47 and 48 EUCFR; Case C-166/13 *Sophie Mukarubega v Préfet de police and Préfet de la Seine-Saint-Denis* EU:C:2014:2336, para 44; See also Case C-277/11 *M. M v Minister for Justice, Equality and Law Reform and Others* EU:C:2012:744, para 82; Case C-166/13 *Sophie Mukarubega v Préfet de police and Préfet de la Seine-Saint-Denis* EU:C:2014:2336, para 53.

[42] Case C-612/15 *Nikolay Kolev and Others* EU:C:2018:392.

[43] Case C-358/16 *UBS Europe SE and Alain Hondequin and Others v DV and Others* EU:C:2018:715.

[44] Case C-419/14 *WebMindLicenses kft v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Főigazgatóság* EU:C:2015:832, paras 63 and 64.

[45] Ibid, para 49.

[46] Case C-614/14 *Atanas Ognyanov* EU:C:2016:514.

[47] Case C-377/18 *AH and Others* EU:C:2019:670.

[48] Ibid, para 41.

[49] Case C-399/11 *Stefano Melloni v Ministerio Fiscal* EU:C:2013:107, para 61.

[50] Ibid.

We can conclude this section by observing that Article 48 was ~~consistently~~ not used by the EU judicature to expand the guarantees already provided under Article 47 Charter. However, if Articles 47 and 48 Charter were fully interchangeable, we might ~~even~~ wonder why Article 6 ECHR has been broken up into two separate provisions under the Charter. As suggested, the additional value of Article 48 could be in granting specific defence rights in criminal proceedings building on and going beyond the scope of Article 47. Interestingly, the analysis of the relationship between Articles 47 and 49 Charter leads to different results, as will be explained in the next section.

## IV. Reciprocal Influences and Missed Opportunities: Article 47 and Article 49 Charter

As mentioned, Article 49 Charter provides three principles: that of legality, that of *favor rei* and that of proportionality. The case law signals that Article 49 Charter is used mainly to protect the principles of legality and proportionality of penalties in the field of criminal law. The principle of *favor rei* is somewhat less developed in the EU case law, and, in any event, not in conjunction with Article 47. Article 49 Charter appears to have more independence from Article 47 compared to Article 48. At the same time, although not apparently linked in EU case law, Articles 47 and 49 reinforce each other. Without the possibility of an effective judicial review of penalties, the principle of proportionality of penalties and that of legality could not be ensured. The link between these two provisions is nevertheless under-explored in the existing jurisprudence, as will be illustrated in the following paragraphs.

In *Rosneft*, the CJEU established that the principle of legality entails that the law of Member States 'must define clearly offences and the penalties which they attract. That requirement is satisfied where the individual concerned is able, on the basis of the wording of the relevant provision and, if need be, with the help of the interpretative guidance given by the courts, to know which acts or omissions will make him criminally liable'.[51] This does not mean that the law should be 'absolutely clear'. On the contrary, the principle of *nulla poena sine lege certa* allows the clarification of rules of criminal liability by means of judicial interpretations, provided that those interpretations are reasonably foreseeable.[52]

The principle of proportionality of penalties, instead, requires the severity of the penalties to correspond to the seriousness of the offence.[53] In this area, the CJEU has maintained consistency with the case law from Strasbourg under Article 52(3) Charter. In the light of the ECtHR case law, the CJEU has restated that the circumstances of the specific case should be taken into account in determining the penalty and fixing the amount of the fine.[54] The CJEU has further acknowledged that the existence of effective remedies is crucial to enable courts to scrutinise penalties. The connection between the

[51] Case C-405/10 *QB* EU:C:2011:722, para 48.
[52] Case C-72/15 ~~*PJSC*~~ *Rosneft* ~~*Oil Company v Her Majesty's Treasury and Others*~~ EU:C:2017:236, para 167.
[53] Case C-524/15 *Menci* EU:C:2018:197, para 55.
[54] Case C-384/17 *Link Logistik N&N* EU:C:2018:810, para 45.

proportionality of penalties and effective judicial review emerges in *Delvigne*,[55] one of the few cases in which Article 49 Charter has been interpreted.

The case involved the challenge of a ban introduced in France to disenfranchise those convicted of a serious crime of the right to vote at the European Parliament elections. The question was whether this legislation was compatible with EU law. In order to support the validity of the French legislation, the Court observed that '[…] [the considered] legislation expressly provides for the possibility of persons subject to such a ban applying for, and obtaining, the lifting of that ban. […] The seizing of a national court having jurisdiction under that provision by a person in Mr Delvigne's situation, who wishes to have a ban that resulted, by operation of law, from a criminal conviction under the old Criminal Code lifted, paves the way for that person's individual situation to be reassessed, including with regard to the duration of that ban.'[56] Therefore, the availability of judicial review contributed to ensure the validity of the ban system, since it offered the possibility for individuals to obtain the review of duration of the ban.

*Rosneft* and *Delvigne* suggest that Article 47 is the gateway to Article 49: the existence of an effective remedy and compliance with the right to a fair trial are the preliminary step to then evaluate whether penalties are proportionate. The remedies of the courts, including judicial review, may also be helpful to seek interpretation of criminal law and thus assess whether the criminal rules are sufficiently foreseeable. Yet, other EU judgments have not deployed the full potential of Article 49 Charter, which appears caught up in the net of Article 47 Charter and EU established case law on the proportionality of penalties. *Texdata* is a case illustrative of the limited – if not absent role – of Article 49 Charter[57] and the reluctance of courts to carry out an in-depth analysis of the proportionality of penalties.

The issue concerned whether the penalty system existing in Austria for violations of Directive 89/666/EEC was compatible with, among others, the duty of Member States to provide appropriate penalties for failure to disclose financial accounts, and the right to an effective remedy enshrined in Article 47 Charter. Considering the appropriateness of the penalties, the CJEU mentioned its relevant case law on proportionality,[58] and, relying on the evidence submitted by the Commission, it concluded that the amount of penalties existing in Austria converged with the average amount imposed by Member States for the same breach.[59] The CJEU then moved on to the assessment of the limitations to the right to an effective remedy deriving from the automatic imposition of those penalties, and found that they were lawful. Overall, the outcome of the case was influenced by the principle of proportionality, applied in its soft version, and ~~that of~~ a fair trial.

The absence of any reference to Article 49 Charter in *Texdata* might suggest the uneasiness of the courts, both at national and EU level, to deal with issues of an administrative nature, such as the level of penalties. The appropriate amount of fines is indeed identified in the light of various elements, such as the conduct of the addressee of the

[55] Case C-650/13 *Delvigne* EU:C:2015:648.
[56] Ibid, para 57.
[57] Case C-418/11 *Textdata Software* EU:C:2013:588.
[58] Ibid, para 49.
[59] Ibid, para 57.

penalty and the importance of the policy field in which fines are to be imposed. An intense judicial review of these choices might overlap with administrative discretion and lead courts to substitute themselves for the administration. At the same time, a combined reading of Articles 47 and 49 Charter entails that the courts should actively protect rights and offer effective judicial review,[60] also of penalties. In this respect, national and EU authorities, and especially courts, should carry out an intense scrutiny of the proportionality of fines.

Ensuring that the mandate stemming from a combined reading of Articles 47 and 49 is fulfilled becomes particularly crucial in areas where penalties are tools used to achieve the effectiveness of EU law, such as in the competition field.[61] Although the EU courts have stated that the review of penalties in that area should be substantive, EU case law shows a different picture regarding the intensity of the scrutiny: the review of the proportionality of penalties in the competition area has so far been deferential towards the Commission.[62] In this respect, it should be remarked that when judicial review does not fulfil the requirements of Articles 47 and 49, the legitimacy of courts and ultimately the entire system on which penalties are based may be affected. Thus, to avoid infringing both Articles 47 and 49 requirements and the objective of ensuring fairness in competition fields, it is essential that both national and EU courts evaluate not only the existence of an effective remedy, but also the proportionality of penalties. Such a review should not lead to favouring the addressee or the administration imposing those measures, but should instead consider how fairness could be restored in the market via the imposition of penalties. After all, justice should also mean that penalties are set to a level that is appropriate to the offence committed.

## V. Shining in Their Own Lights: Articles 47 and 50 Charter

As stated above, Article 50 Charter enshrines the *ne bis in idem* principle. Before its codification in the Charter,[63] the *ne bis in idem* rule was protected in the EU as a general principle of EU law,[64] representing a 'general requirement of natural justice'.[65] Subsequently, *ne bis in idem* explicitly acquired the status of a fundamental principle of Community law.[66] This principle rests on legal certainty and equity, two founding pillars of every legal system.[67] Article 50 Charter shares the same

[60] ~~Case C-72/15~~ *Rosneft* ~~EU:C:2017:236~~, para 73.

[61] *Cf* with Council Reg (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [2003] OJ L1/1.

[62] For an analysis of the review of penalties by the EU judicature in the field of competition law, see G Gentile 'Two Strings to One Bow? Article 47 of the EU Charter of Fundamental Rights in the EU Competition Case Law: Between Procedural and Substantive Fairness' (2020) 6 *Market and Competition Law Review* 169.

[63] Such provision has been said to have direct effect, see Case C-537/16 *Garlsson Real Estate and Others* EU:C:2018:193, para 68.

[64] Joined Cases C-18 and C-35-65 ~~*Max*~~ *Gutmann* ~~*v Commission of the EAEC*~~ EU:C:1967:6.

[65] Case C-14/68 *Wilhelm and Others* EU:C:1969:4, para 11.

[66] Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P, C-251/99 P, C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij NV* EU:C:2002:582, para 59.

[67] See, eg Case C-617/17 *Powszechny Zakład Ubezpieczeń na Życie* EU:C:2019:283, para 33.

rationale as Article 47 Charter:[68] both provisions give form to the EU notion of justice by ensuring that individuals are safeguarded from the arbitrariness of the decisions of public authorities. In particular, both these Articles protect fairness, Article 47 with regards to the conduct of trials, and Article 50 by avoiding double punishment for the same crime. Yet, Article 50 has specific characteristics indispensable in the EU conceptualisation of justice: this provision enshrines a transnational principle of criminal law, that of *ne bis in idem*, one of the pillars of the AFSJ. In so doing, Article 50 expands the guarantees deriving from Article 47.

Moving on to the interplay between Articles 47 and 50 Charter in EU case law, independence between these two provisions is the most prominent feature. Indeed, in the majority of the cases analysed,[69] no reference to Article 47 is made when Article 50 applies. Overall, the result gathered from the case-law analysis is that the Court focuses on Article 50 as a stand-alone provision. This observation allows us to draw the conclusion that Article 50 Charter is the provision that is most autonomous from Article 47 in the Justice Title of the Charter.

The distinctive nature of Article 50 Charter becomes evident in EU case law. To begin with, while Article 47 Charter applies to criminal, civil and administrative proceedings, Article 50 concerns exclusively criminal matters. Identifying criminal conducts is particularly relevant in cases where the law provides for proceedings or penalties which are in the grey area between administrative and criminal law, for instance in the field of competition law or in cases concerning VAT and/or tax evasion.[70] The CJEU has explained that the assessment of the nature of proceedings and penalties must be conducted not only in light of the classifications present under national law, but also on the basis of the nature of the offence and the degree of severity of the penalty.[71]

Another condition for the applicability of Article 50 Charter is that the individual invoking this provision must be the addressee of a final decision of conviction or acquittance (*res judicata*).[72] As observed by Advocate General Colomer, the indefinite repetition of the exercise of the *ius puniendi* is unacceptable.[73] The evaluation of the final nature of a decision must be carried out on the basis of national law, yet also taking into consideration possible prosecutions in other Member States.[74] However, national legal classifications of the facts and the legal interests protected by criminal law are not a decisive factor.[75] In light of the uniform application of EU law, in fact, the scope of the protection conferred by Article 50 of the Charter cannot vary from one Member State

[68] See B Van Bockel, 'The "European" Ne Bis in Idem Principle: Substance, Sources, and Scope' in B van Bockel (ed), *Ne Bis in Idem in EU Law* (Cambridge University Press, 2016).

[69] See ~~Case C-399/11 *Stefano* Melloni *v Ministerio Fiscal* EU:C:2013:107~~.

[70] ~~Case C-617/10~~ *Åkerberg Fransson* ~~EU:C:2013:105~~; Joined cases C-217/15 and C-350/15 *Orsi and Baldetti* EU:C:2017:264.

[71] ~~Case C-617/10~~ *Åkerberg Fransson* ~~EU:C:2013:105~~, para 35; ~~Case C-524/15~~ *Menci* ~~EU:C:2018:197~~, paras 26–32.

[72] Case C-268/17 *AY* EU:C:2018:602, paras 41–44.

[73] Joined Cases C-187 and 385/01 *Criminal proceedings against Hüseyin Gözütok and Klaus Brügge* EU:C:2002:516, Opinion of AG Ruiz-Jarabo Colomer, para 48.

[74] Case C-398/12 *M* EU:C:2014:1057, paras 36–37; Case C-10/18P *Mowi ASA v European Commission* EU:C:2020:149, paras 75–78.

[75] ~~Ibid~~, para 36; ~~Case C-537/16~~ *Garlsson Real Estate and Others* ~~EU:C:2018:193~~, para 37.

to another.[76] Advocate General Colomer further explained that 'It would be contrary to the very concept of justice to deny the effectiveness of foreign criminal judgments. That approach would both undermine the fight against criminality and the rights of the convicted person.'[77] We can therefore observe that the application of Article 50 is guided by the EU general principles of mutual trust and mutual recognition, cornerstones of the AFSJ in the EU legal order. Both rules build on the assumption that the systems of the EU Member States are 'equivalent' and offer the same guarantees for enforcement of EU law and rights.

Furthermore, for the purpose of establishing the existence of the *idem factum*, meaning the same offence, the relevant criterion according to the case law of the Court is the identity of the material facts. This identity is understood as the existence of a set of concrete circumstances which are inextricably linked together, and which resulted in the final decision.[78] Therefore, attention should be paid to substantive factors and not only legal qualifications of the conduct.

Finally, with regards to the prohibition of duplication of proceedings and penalties, the CJEU has held that it may be possible to derogate from this rule where the proceedings pursue, for the purpose of achieving an objective of general interest, complementary aims relating to different aspects of the same unlawful conduct.[79] Such an interpretation is in line with the case law of the ECtHR.[80] However, it should be highlighted that allowing an indefinite progression of proceedings against the same person for the same unlawful conduct, even with the *caveat* of complementarity, may be at odds with the fair trial principle enshrined in Article 47 Charter, and more generally with a substantive understanding of justice. If applied broadly, this case law could ultimately promote an overly narrow version of the *ne bis in idem* principle.[81]

To sum up, notwithstanding the commonality of rationales, Article 47 and Article 50 Charter are more independent than their proximity in the Charter might let us think. The *ne bis in idem* rule represents an indispensable safeguard for individuals against the *ius puniendi* and the arbitrariness of decisions in criminal proceedings, which could be hardly considered as enshrined in Article 47 Charter.

In the light of this analysis, the next section will offer a description of the content of 'Justice' as it emerges from the homonymous title of the Charter.

[76] Case C-537/16 *Garlsson Real Estate and Others* EU:C:2018:193, para 38.

[77] Joined Cases C-187 and 385/01 *Criminal proceedings against Hüseyin Gözütok and Klaus Brügge* EU:C:2002:516, Opinion of AG Ruiz-Jarabo Colomer, para 59.

[78] Ibid, para 35.

[79] Case C-524/15 *Menci* EU:C:2018:197, paras 39–44; Case C-596/16 *Di Puma* EU:C:2018:192, paras 39–41; Case C-129/14 PPU *Spasic* EU:C:2014:586, paras 55–59.

[80] Since, as stated above, Art 50 EUCFR corresponds to Art 4 of Protocol no 7 to the ECHR their meaning and scope have to be interpreted coherently; Art 52(3) EUCFR; Joined cases C-217/15 and C-350/15 *Orsi and Baldetti* EU:C:2017:264, para 24; Case C-524/15 *Menci* EU:C:2018:197, paras 61–62; Judgment of the European Court of Human Rights of 15 November 2016 in Case No 24130/11 *A and B v Norway*, para 132.

[81] M Vetzo, 'The Past, Present and Future of the Ne Bis In Idem Dialogue between the Court of Justice of the European Union and the European Court of Human Rights: The Cases of Menci, Garlsson and Di Puma' (2018) 11 *Review of European Administrative Law* 55, 75.

## VI. Finding (Some) Pieces of the EU Justice Jigsaw Puzzle

The quest for a conceptualisation of justice in the EU was prompted by a multitude of authors and practitioners. De Burca, Kochenov and Williams have highlighted a relative lack of considerations concerning justice in the EU legal framework.[82] Nonetheless, other authors have perceived the EU as a plausible and appropriate site for substantive questions of justice, in particular after the entry into force of the Lisbon Treaty. De Witte is among the first authors to have offered a reconstruction of the notion of EU justice. He has argued that justice in the EU is 'a tiered concept [...], which is reliant both on the nation state, with its capacity to generate the redistributive commitments and political structures required for the provision of healthcare, education, social security, social assistance or labour law; and on the European Union, whose rights to free movement bolster the capacity of its citizens to pursue their own perception of the "good life"'[83] The Charter has further compensated for the criticism raised in the literature and has itself provided the legal basis to mould the notion of justice in the EU. In this respect, authors such as Douglas-Scott[84] have argued that human rights are the best route for justice in the EU. Fundamental rights and freedoms are indeed the foundation of the European common heritage to create an area of free movement, sincere cooperation and solidarity among Member States.

Focusing on the elements of the EU notion of justice emerging from the Justice Title of the Charter, we can offer two preliminary reflections. To begin with, justice seen through the lenses of Articles 47, 48, 49 and 50 Charter is the result of different sources of law; it is accordingly not monolithic, but rather multi-layered, fragmented and polyform. A primary source of inspiration to interpret the Justice Title is the ECHR, even though the CJEU can build upon the protection provided by the Convention and grant broader guarantees under the Charter Articles.[85] Two further sources complicate the puzzle.

First, national procedural rules, since the Justice provisions of the Charter focus on enforcement and procedural rights and the Member States remain the masters of the procedure under the principle of national procedural autonomy.[86] Secondly, EU measures laying down procedural rules,[87] which complement the enforcement of EU-derived rights and obligations. The notion of justice is also shaped by a matrix of different principles. To name but a few, mutual trust, mutual recognition, national procedural autonomy, effective judicial protection, legality, proportionality and fairness in criminal proceedings all inform the EU understanding of justice in the Charter. This network of principles is based on the premise that Member States share common founding values in

[82] D Kochenov, G De Búrca and A Williams (eds), *Europe's Justice Deficit?* (Hart Publishing, 2015).

[83] F De Witte, *Justice in the EU: The Emergence of Transnational Solidarity* (Oxford University Press, 2015).

[84] See S Douglas-Scott, 'Human Rights as a Basis for Justice in the European Union' (2017) 8 *Transnational Legal Theory* 59.

[85] See Art 52 EUCFR.

[86] For an account on the principle of procedural autonomy, A Biondi and G Gentile, 'National Procedural Autonomy' (2019) *Max Planck Encyclopedia of International Procedural Law*; C Kakouris, 'Do the Member States Possess Judicial Procedural Autonomy' (1997) 34 *Common Market Law Review* 1389.

[87] See, eg Dir 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings [2012] OJ L142/1.

a society in which justice prevails. How the CJEU reconciles these various legal sources while applying the Justice Title of the Charter ultimately determines how individuals can seek justice via national and EU procedural rules.

Therefore, the Justice provisions of the Charter are at the crossroads of international fundamental rights, national procedural rules, EU legislation laying down procedural rules and general principles of EU law. Accordingly, the EU conceptualisation of justice that emerges constitutes a prime example of cross-fertilisation, but also complexity. The complexity of the image of 'justice' stemming from the homonymous Charter Title could be considered, to a certain extent, to lead to a lack of clarity and coherence. It has nevertheless the advantage of accommodating pluralism in the enforcement of these fundamental rights in the different Member States. *United in diversity* is not only the motto of the EU; it also represents a guiding principle in the multilevel system of fundamental rights protection, including those included in the Justice Title of the Charter.

~~Thirdly,~~ another reflection arises: justice in the homonymous Title of the Charter is individual-centred. Differently from other provisions included in the Charter, such as those concerning free-movement-related fundamental rights[88] which directly contribute to the achievement of the objectives of the internal market, the Justice Title primarily focuses on the protection of individuals against abuses by public authorities in the enforcement of the law. These provisions enshrine an idea of justice that dates back to the primordial bills of rights, which established, for instance, the principles of *habeas corpus* and natural justice.[89] The inclusion of these guarantees in the Charter might appear at first far-fetched: after all, the Member States retain general competence in laying down procedural rules and regulating criminal law. However, the expansion of competences of the EU in the field of criminal and civil procedure[90] as well as the increase in EU secondary legislation concerning procedural rights[91] also require the advancement of procedural fundamental rights. These rights, by their nature, offer protection to individuals in the interaction with public authorities enforcing the law. In this sense, they are the most crucial rights for achieving justice in a legal order: without the guarantee that public authorities would act fairly and proportionately, there is no appearance of justice in a given society.

While the individual nature of these fundamental rights guarantees is evident, ~~a new trend in~~ case law ~~signals~~ that they, and especially Article 47 Charter, may be used beyond an individual dimension. By way of example, in *Deutsche Umwelthilfe eV*,[92] Article 47 was used to enforce national procedures providing detention in case of

[88] See, eg Arts 6 and 19 EUCFR.

[89] UK Parliament, 'The Contents of Magna Carta' (*UK Parliament Website*, 2021), available at https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/magnacarta/.

[90] See Arts 81, 82 and 83 TFEU.

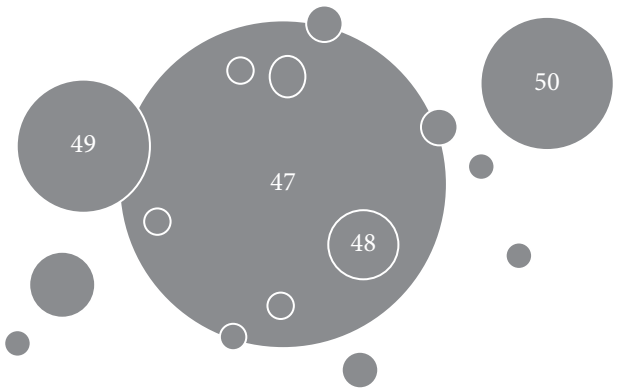
[91] See, eg Dir 2012/13/EU; Dir 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings [2010] OJ L280/1; Dir 2016/343 of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings [2016] OJ L65/1; Dir 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings [2016] OJ L132/1.

[92] Case C-752/18 *Deutsche Umwelthilfe eV* EU:C:2019:1114.

breach of EU law on gas emission. This interpretation of Article 47 Charter is in sharp contrast with the rationale of the Justice Title of the Charter, being that of equipping individuals with essential guarantees against abuses of public authorities in the enforcement of the law. Had the CJEU contextualised the role of Article 47 in an individual-centred justice perspective, this reading would have been highly unlikely.[93] While reliance on Article 47 Charter in *Deutsche Umwelthilfe eV* contributed towards the effective enforcement of EU legislation on gas emission, it is submitted that a 'general-interest-oriented' application of Article 47 could deprive this norm of its nature as an individual fundamental right as interpreted in light of the individual-centred focus of the EU Justice Title.

To conclude, the guarantees deriving from the Justice Title and especially from Articles 48, 49 and 50 are still in the process of being shaped in EU case law. Engagement with these provisions, both by national and EU authorities, appears a necessary and required evolution of the EU legal order. An excessive focus by national and EU courts solely on the effective remedy and fair trial right under Article 47 when theorizing, for instance, the protection of the rule of law, risks fostering an excessively 'thin' version[94] of that value in the EU. Indeed, the possibility of accessing remedies and obtaining a fair trial is not an automatic guarantee for justice. Articles 48 and following could also provide further elements for the EU understanding of the rule of law, and, ultimately, justice. The guarantees existing under the Charter should be seen as a further shield for and an opportunity to expand the rule of law understanding and the notion of justice in the EU legal order. The increasing regulation of procedural rules at EU level may ultimately give prominence to the rights of the Justice Title in the near future.

**Figure 1** The relationship between Article 47 Charter and the other Justice provisions




[93] The relationship between effective judicial protection and effectiveness of EU law is notoriously complex, and cases such as *Deutsche Umwelthilfe eV* do not contribute to its clarification; See S Prechal and R Widdershoven, 'Redefining the Relationship between "Rewe-Effectiveness" and Effective Judicial Protection' (2011) 4 *Review of European Administrative Law* 31.

[94] For a discussion on the rule of law conceptions in the EU and beyond, see T Konstadinides, *The Rule of Law in the European Union: The Internal Dimension* (~~Oxford,~~ Hart Publishing, 2017).

## VII. Conclusion

The three acts of this chapter had an explorative nature: they sought to cast light on the Justice Title of the Charter with a twofold objective. First, the chapter aimed to unpack the interplay between Articles 47, 48, 49 and 50 of the Charter; secondly, it endeavoured to paint the idea of 'justice' that emerges from the homonymous Charter title. The main findings of this study can be summarised as follows. Articles 48, 49, 50 complement Article 47 and all these provisions enshrine different general principles of EU law which are corollaries of the rule of law. While Article 48 does not add much to the scope of Article 47, Articles 49 and 50 appear to have a more autonomous value. Overall, Articles 48, 49 and 50 appear as planets gravitating at different distances from Article 47, which is the fulcrum of the Justice Title.[95]

The CJEU often interprets the other procedural fundamental rights in combination with Article 47 of the Charter. This occurs mainly in relation to Article 48 of the Charter. A similar path does not emerge in relation to Articles 49 and 50 of the Charter, which seem to possess an autonomous nature from Article 47. Overall, Article 47 and, in particular, the right to an 'effective remedy' under Article 47(1), are predominant in CJEU case law regarding fundamental procedural rights, with only a subsidiary role being played by the other procedural rights.

The case law under consideration also illustrated some core aspects of the notion of justice: justice in the light of Articles 47, 48, 49 and 50 of the Charter is fragmented, polymorph and individualistic. Article 47 should be seen as the minimum core of the rule of law and, thus Articles 48, 49 and 50 could offer a broader understanding of the rule of law. However, these latter provisions are not extensively applied in EU case law. Cases citing these articles are significantly fewer compared to those referring to Article 47. It follows that the Justice title of the Charter has a potential which has not yet been fully explored by the EU and national judicatures. The chapter invites national courts and legal practitioners to delineate, in collaboration with the CJEU, EU standards of protection of justice rights by dialoguing with the CJEU on the meaning of Charter rights beyond Article 47 thereof. In any event, the best has yet to come: the 'procedur-alisation' of EU law by way of increasing adoption of procedural measures by the EU institutions may offer national and EU courts the chance to explore the prospects of the other justice provisions of the Charter.

In conclusion, the Charter strengthens the idea that the EU is based on justice under a human rights-based approach. The Charter now includes provisions that can allow this notion to be further defined, and, in parallel, to reinforce the role of the CJEU as a 'Court of Justice' and not merely of 'EU law'. However, justice in the EU is a complex jigsaw, and most of its pieces are still to be found.

[95] See Figure 1 above.